

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Rulemaking to Prohibit)	
In-Person Distribution of Handsets)	
To Prospective Lifeline Customers)	
)	
Lifeline and Link Up Reform)	<u>WC Docket No. 11-42</u>
And Modernization)	
)	
Lifeline and Link Up)	<u>WC Docket No. 96-45</u>
)	
Federal- State Joint Board on Universal Service)	<u>WC Docket No. 03-109</u>

**INITIAL COMMENTS OF NALA/PCA TO THE
PETITION FOR RULEMAKING TO PROHIBIT IN-PERSON
DISTRIBUTION OF HANDSETS TO PROSPECTIVE LIFELINE CUSTOMERS**

The National ALEC Association/Prepaid Communications Association (hereafter “NALA/PCA”) is an organization of telecommunications providers that focus their marketing efforts on low income consumers. The telecommunications company members include wireless providers as well as CLECs providing wireline services. Several companies hold Eligible Telecom Carrier (ETC) designations from various state commissions and are experienced providers of Lifeline services to qualified consumers.

NALA/PCA provides the following comments in response to the TracFone’s Petition for Rulemaking and reserves the opportunity to provide reply comments on issues it does not address in these initial comments.

In-Person Distribution of Handsets is Beneficial to Consumers

NALA/PCA urges the Commission to deny TracFone's Petition for Rulemaking. In-person distribution of handsets is invaluable to the Lifeline-eligible community.

TracFone's petition requests an unreasonably broad rulemaking. It paints a picture of a make-shift tent set up in the middle of the night and 5000 phones handed out the next morning in the first hour of daylight with no effort to verify eligibility. In reality, eligibility verification is as reliable with in-person distribution of handsets as without, if not more. At an event or store that includes in-person distribution of handsets, an applicant completes all required paperwork and waits while the ETC verifies eligibility. In-person distribution representatives have online real-time access to databases, forms, and the ETC's main office. With a web-based approval tool such as that provided by CGM, this is a relatively short and accurate process. The ETC then sends a message to its representative at the event or store authorizing release of the handset. TracFone's assumption that verification of applicants' eligibility is not as reliable is simply incorrect.

Not only is TracFone's picture unrealistic, but a blanket prohibition of in-person distribution of handsets to prospective Lifeline customers would affect many more situations than the imaginary reckless tent giveaways. "In-person distribution" covers those customers who enter a brick and mortar location, complete all required paperwork, and leave with a handset. This is how the majority of Lifeline (and non-Lifeline) phone transactions are conducted. It is not fair or equitable that Lifeline customers are not afforded reasonable handset availability because they receive a subsidy from USF.

Furthermore, blanket prohibition of in-person distribution of handsets would also prevent efficiently serving those who have survived a natural disaster. A Lifeline-eligible resident of

New Orleans after Hurricane Katrina or Moore, Oklahoma, today needs to be able to obtain the Lifeline service he or she qualifies for without additional unnecessary obstacles or waiting periods. An in-person handset distribution is ideal for addressing these populations as well as other qualified populations. Tracfone recognizes the need to provide cell phones to such displaced people, and Lifeline providers' unique opportunity to meet that need.¹ Surely TracFone cannot simultaneously deny that face-to-face interactions are one of the most effective outreach methods in communities affected by disasters.

In fact, in-person distribution is one of the most effective outreach methods for many Lifeline-eligible populations. Cell phones, personal computers, and even public pay phones are scarce among low-income populations. If potential Lifeline participants see an advertisement for Lifeline where immediate enrollment with handset distribution is not available, it is often incredibly cumbersome to then find a computer or phone to complete the application process to obtain a handset and service. Moreover, navigating the program requirements, including address validation, plan options, submission of a signature, and uploading of proof of identification and eligibility, can be prohibitively complicated. In-person enrollment addresses these challenges, but TracFone asks for the addition of a waiting period to receive a handset. This is an unnecessary demand to place on underserved Americans to receive a service so vital to their survival.

In-person distribution of handsets offers Lifeline applicants more efficient and reliable service. Customers can be trained face-to-face on how to use the phone. The customer makes the first phone call and clearly understands that he or she needs to use the phone in order to keep it. A defective phone can be identified immediately, and no return and replacement shipping

¹ See Attachment A, TracFone Advertisement in New Orleans Times-Picayune, May 17, 2013.

process is required. Ultimately, with in-person handset distribution, the customer has a working phone as soon as he or she is approved for Lifeline service, eliminating unnecessary lag time before receiving benefits for which the customer is eligible.

TracFone's Petition Failed to Provide Justification for the Need for the Requested Prohibition

NALA/PCA understands the requested rulemaking to prohibit in-person distribution of handsets is purportedly intended to prevent waste, fraud, and abuse of the Universal Service Fund (USF) resources. However, TracFone's Petition fails to offer any justification of the need for such prohibition or explanation of how prohibition of in-person distribution of handsets would prevent waste, fraud, and abuse.

TracFone's Petition repeatedly states that in-person distribution of handsets "invites fraud."² However, TracFone offers no evidence that fraud actually occurs in connection with in-person distribution of handsets. Not a single instance of proven fraud arising from in-person handset distribution is provided.

There is also no evidence presented that in-person distribution of handsets affects verification of eligibility in any manner. TracFone does not even attempt to demonstrate that fair and compliant review of applications and documentation in connection with in-person distribution of handsets is any different than review of applications received via internet or fax,

² *In the Matter of Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers, Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, Petition for Rulemaking (May 13, 2013), page 4 "in-person distribution of handsets remains a practice that invites fraud and is difficult to police," and page 6 "Unlike grassroots marketing, in-person handset distribution is not an effective consumer outreach method since it invites fraud."

or through a call center, with distribution of handsets via mail. In fact, transactions conducted electronically have the distinct disadvantage of not being able to visually identify and confirm consistency within applicants' applications. With face-to-face distribution, ETC employees can ensure that the photo identification presented matches the person standing in front of them, waiting to receive the handset.

The evidence actually indicates that in-person handset distribution is not a primary source of fraud, no matter what it "invites." The true primary sources of waste, fraud, and abuse are already being addressed without the prohibition of in-person distribution of handsets. In fact, TracFone not only lists the many reforms that the Commission has already undertaken to prevent waste, fraud, and abuse,³ but also cites FCC Public Notices extolling the success of those reforms.⁴ For example, Lifeline providers have been asked to amend Compliance Plans to affirm that only company employees will be responsible for overseeing and finalizing Lifeline enrollments, including review of government-issued identification and confirmation of other income or program participation eligibility requirements. As a result, any third-party agents working at in-person events are not able to finalize enrollments without the oversight and approval of a company employee. Company employees, in turn, are extensively trained on eligibility requirements, and are not motivated by commission payments to accept ineligible applicants. Phones are only distributed if the subscriber is eligible per FCC rules.

NALA/PCA understands the concern that if a handset is distributed to an applicant who is later determined to be ineligible, the user might be left with the impression that the Universal Service Fund paid for the service and/or handset. This may perpetuate the misunderstanding that

³ *Id.* at page 2.

⁴ *Id.* at page 3.

users can successfully receive benefits to which they are not entitled. NALA/PCA suggests that this concern can be addressed without eliminating in-person distribution of handsets. All customers who receive handsets via in-person distribution can be provided with a statement in writing that the handset is furnished to the applicant based upon information available at that time. The statement can also explain that if the applicant is found to be ineligible for any reason, the carrier will direct all outbound calls to the carrier's call center and disable incoming call and text capability ("hotline" the phone). The user will then be directed to make arrangements to either return the phone or pay for the phone and related service. Realistically, few, if any, end users will return the phone if found ineligible after receiving a handset; in this way, in-person phone distribution is a known risk undertaken by ETCs. It is a risk ETCs consider reasonable to further universal service and to enjoy continued business success. However, including a clear statement to the applicant outlining the situation would help the end user understand that "their service is off," and therefore they are not defrauding the Universal Service Fund. This can be implemented as an interim approach until national and state eligibility and duplicate databases are complete.

TracFone is Attempting to Use Federal Regulations to Limit its Competition

NALA/PCA requests that the Commission deny TracFone's Petition for Rulemaking. The simple fact is that TracFone's competitors utilize a type of marketing that TracFone chooses not to use. This petition for rulemaking is a blatant attempt to curtail competitors' access to consumers in order to bolster TracFone's market share. Tracfone has made the proposal to eliminate face-to-face distribution of handsets based on the sole and simple reason that in-person

handset distribution does not fit its business model. TracFone insinuates that its model of shipping a handset provides less opportunity for fraud than does the practice of in-person distribution, but provides neither explanation nor factual example.

Conclusion

There is no creditable argument that this rulemaking is necessary. The availability of in-person handset distribution is beneficial to consumers. Verification of eligibility is as reliable and even more efficient than where handsets are shipped to customers. There is no evidence of waste, fraud, and abuse to justify implementation of an unneeded and anti-competitive regulation. Therefore, NALA/PCA urges the Commission to deny TracFone's Petition for Rulemaking.

Respectfully submitted,

Mark Foster
Attorney at Law
707 West Tenth Street
Austin, TX 78701
(512) 708-8700
(512) 697-0058/fax

By: /s/ *Mark Foster*

Mark Foster
Texas Bar No. 07293850
mark@mfoosterlaw.com

Counsel for NALA/PCA